



**Federal Communications Commission
Washington, D.C. 205543**

September 1, 2010

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In Reply Refer to:

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Curt R. Tomsen
North Custer Radio, Inc.
P.O. Box 36
Challis, ID 83226

In re: FM Translator Station K232CL, Challis, ID
North Custer Radio, Inc.
Facility ID: 49212
File No. BRFT-20080528ABU

Dear Mr. Tomsen:

We have before us a November 18, 2009, Written Statement ("Statement"), filed by North Custer, Radio, Inc., ("Licensee"), licensee of FM Translator Station K232CL, Challis, Idaho ("Station") requesting reduction or cancellation of an October 16, 2009, Notice of Apparent Liability for Forfeiture ("NAL")¹ in the amount of seven hundred fifty dollars (\$750) for its apparent willful violation of Section 73.3539 of the Commission's Rules ("Rules") and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").² The violations involve Licensee's failure to file a timely license renewal application for the Station and its unauthorized operation of the Station after its license for the Station had expired. By this action, we cancel the *NAL* and admonish Licensee for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the *NAL*, Licensee's application to renew the Station's license was due on June 1, 2005, four months prior to the license expiration date of October 1, 2005. According to Commission records, no such application was filed, and the Station's license expired on October 1, 2005. On May 29, 2008, Licensee tendered a license renewal application for the Station and a request for special temporary authority ("STA") to continue operation pending consideration of the license renewal application. Licensee explained that it was under the impression that the renewal application had been filled out but, when a new board member assumed the responsibility for filing the renewal application, he discovered that the process had not been completed. He then proceeded to complete and file the application. The staff granted the STA request on June 3, 2008.³ On October 16, 2009, the Bureau issued

¹*North Custer Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 12671 (MB 2009).

² 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

³ See File No. *BLSTA-20080528ACG*

a NAL in the amount of seven hundred and fifty dollars to Licensee.⁴ Licensee filed its Statement requesting cancellation of the forfeiture on November 18, 2009, arguing that the failure to timely file the renewal application was inadvertent and that the proposed forfeiture would be a financial hardship.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

Licensee suggests that the untimely renewal was not willful but was the result of an oversight. It explains in the Statement that Mr. Jim Hone, who was not officially affiliated with the Station, assisted Licensee with FCC compliance issues, but did not timely file the renewal application.⁹ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹ Licensee was ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.¹²

Licensee states that it receives no income from the operation of the Station.¹³ We interpret this statement to mean that the forfeiture would be a financial hardship for Licensee. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year

⁴ *North Custer Radio, Inc.*, 22 FCC Rcd at 12671.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Statement at 1-2.

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹¹ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹² See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008) (citing *Request for Waiver by Center City School*, Order, 17 FCC Rcd 22424, 22426 (WCB 2002) ("it is the applicant who has responsibility ultimately for the timely submission of its application.")).

¹³ Statement at 3.

period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴

In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁵ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹⁶ In support of its request for cancellation of the forfeiture, Licensee submits copies of its 2005 and 2006 federal income tax returns, reflecting no income in 2005 and gross revenue of \$220 in 2006.¹⁷

We have examined Licensee's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Licensee willfully violated Section 73.3539 of the Commission's Rules and willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended. However, after reviewing Licensee's claim and the supporting documentation, we believe that payment of the \$750 forfeiture, or any reduction thereof consistent with Commission precedent,¹⁸ would pose a financial hardship in view of Licensee's documented gross income. Accordingly, we cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Licensee for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB200741410123) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED. North Custer Radio, Inc., is instead hereby ADMONISHED for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Challis Chamber of Commerce

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁵ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁶ *Id.*

¹⁷ Licensee states that no tax returns were filed in 2007. We find that given Licensee's history, two years of tax returns are sufficiently reliable and objective documents of the Licensee's financial status.

¹⁸ *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).